Serenethos Care Center LLC d/b/a St. Christopher Convalescent Hospital *and* Service Employees International Union, Local 2015. Case 32-CA-277939

January 14, 2022

DECISION AND ORDER[1]

BY MEMBERS KAPLAN, WILCOX, AND PROUTY

The General Counsel seeks a default judgment in this case on the ground that Serenethos Care Center LLC d/b/a St. Christopher Convalescent Hospital (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Service Employees International Union, Local 2015 (the Union) on June 1 and August 13, 2021,[2] respectively, the General Counsel issued a complaint and notice of hearing on August 16 against the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 22, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on October 1, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent "must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial." It also provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint here affirmatively stated that unless an answer was received by August 30, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that by letter emailed and mailed to the Respondent on September 9, the Respondent was advised that unless an answer was received within 7 days, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

A review of the record indicates that the Respondent has not been represented by counsel in this proceeding. Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that the choice to forgo representation by counsel does not establish good cause for failing to file a timely answer. See, e.g., *Headlands Contracting & Tunnelling, Inc.*, 368 NLRB No. 4, slip op. at 1 (2019); *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co*., 338 NLRB 1068, 1068 (2003). Here, the Respondent never filed an answer, and it offered no good cause explanation for its failure to do so, despite being reminded that its answer was due.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business in Hayward, California, where it has been engaged in the business of providing convalescent care to individuals.

During the 12-month period ending July 31, the Respondent, in conducting its operations described above, derived gross revenues in excess of $100,000.

During the 12-month period ending July 31, the Respondent, in conducting its operations described above, purchased and received goods valued in excess of $5000 directly from points outside the State of California.

Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ron Baldwin	Chief Financial Officer
Patricia Canton	Administrative Assistant
Lucy Qing Xie	Chief Executive Officer

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] Hereinafter, all dates are in 2021 unless otherwise indicated.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees covered by "Section 2. Recognition" of the January 7, 2017 through December 31, 2020 collective-bargaining agreement between Respondent and the Union (Agreement), excluding all other employees, guards, and supervisors as defined in the Act.

Since at least July 25, 2016, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from January 17, 2017, through December 31, 2020 (the Agreement).

At all times since July 25, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 21, 2020, and on various dates thereafter, in writing, including February 26, March 10, March 18, and April 27, and orally about April 28 and May 17, the Union requested that the Respondent meet and bargain for a successor collective-bargaining agreement to the Agreement.

Since about December 2, 2020, and continuing to date, the Respondent has failed and refused to meet and/or to schedule any meetings to bargain for a successor collective-bargaining agreement to the Agreement.

Since about February 26, in writing, the Union has requested that the Respondent furnish the following information in preparation for bargaining for a successor agreement, for each bargaining unit employee: "name, address, home phone number, cell phone number, pay rate, hours per week, shift/schedule of hours, department or unit, job title, e-mail address, and date of hire."

On about April 28, in writing, the Union requested that the Respondent furnish an "updated member roster list with contact information (phone numbers is fine) as well as the schedules for April and May for all members."

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 26, the Respondent has failed and refused to furnish the Union with the information, as described above.

Since about February 26, the Respondent has unreasonably delayed in furnishing the Union with the information, as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to meet and bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union for the purposes of negotiating a successor agreement, we shall order it to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

Further, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish and by unreasonably delaying in furnishing the Union with requested information that is necessary for and relevant to its role as the exclusive collective-bargaining representative of the unit, we shall order the Respondent to timely furnish the requested information, to the extent the information has not previously been provided.

Additionally, the General Counsel requests that we order the Respondent to comply with a bargaining schedule requiring a minimum of 15 hours of bargaining per week and to submit written bargaining progress reports to the Region. As discussed above, the Respondent has unlawfully failed and refused to bargain with the Union for a successor collective bargaining agreement despite the Union's repeated requests to bargain over many months. In fact, the Respondent has failed and refused even to meet and/or to schedule any meetings to bargain since about December 2, 2020. It also has unlawfully failed and refused to furnish, and unreasonably delayed in furnishing, presumptively relevant information that goes to the core of the Union's duties as the exclusive collective-bargaining representative of the unit employees. Given these circumstances, we find that a bargaining schedule requiring the Respondent to meet and bargain with the Union on a regular and timely basis is appropriate and would best effectuate the purposes of the Act. See *All Seasons Climate Control, Inc.*, 357 NLRB 718, 718 fn. 2 (2011) (ordering employer to comply with a bargaining to schedule to remedy its unlawful conduct), enfd. mem. 540 F. App'x 484 (6th Cir. 2013). Accordingly, we shall order the Respondent, upon the Union's request, to bar-

gain for a minimum of 15 hours per week or, in the alternative, on another schedule to which the Union agrees. We shall also require the Respondent to submit written bargaining progress reports to the compliance officer for Region 32 and to serve copies of those reports on the Union.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Serenethos Care Center LLC d/b/a St. Christopher Convalescent Hospital, Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Service Employees International Union, Local 2015 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish and unreasonably delaying in furnishing the Union with requested information that is necessary for and relevant to the performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 15 days of the Union's request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees covered by "Section 2. Recognition" of the January 7, 2017 through December 31, 2020 collective-bargaining agreement between Respondent and the Union (Agreement), excluding all other employees, guards, and supervisors as defined in the Act.

Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week or, in the alternative, on another schedule to which the Union agrees. The Respondent shall submit written bargaining progress reports every 15 days to the compliance officer for Region 32, serving copies thereof on the Union.

(b) Furnish to the Union in a timely manner the information requested by the Union, as described above, since about February 26, 2021, to the extent the information has not been previously provided.

(c) Post at its facility in Hayward, California, copies of the attached notice marked Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 2, 2020.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 14, 2022

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Marvin E. Kaplan, Member

[3] The General Counsel also requests that we order the Respondent to make whole employee negotiators for any earnings lost while attending bargaining sessions. Because it has not been demonstrated that such a remedy is necessary here to effectuate the policies of the Act, we deny this request.

Member Kaplan finds that the Board's traditional remedies are sufficient to redress the violations found. Accordingly, he does not join his colleagues in ordering the extraordinary remedies of requiring the Respondent to bargain on a set schedule and to furnish written progress reports to the Region.

[4] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Gwynne A. Wilcox, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Service Employees International Union, Local 2015 (the Union) as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT refuse to furnish or unreasonably delay in furnishing the Union with requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 15 days of the Union's request, bargain with the Union as the exclusive collective-bargaining representative of our unit employees concerning your terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

All employees covered by "Section 2. Recognition" of the January 7, 2017 through December 31, 2020 collective-bargaining agreement between Respondent and the Union (Agreement), excluding all other employees, guards, and supervisors as defined in the Act.

Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week or, in the alternative, on another schedule to which the Union agrees.

WE WILL submit written bargaining progress reports every 15 days to the compliance officer for Region 32, serving copies thereof on the Union.

WE WILL furnish to the Union in a timely manner the information requested by the Union since about February 26, 2021, to the extent the information has not previously been provided.

SERENETHOS CARE CENTER LLC D/B/A ST. CHRISTOPHER CONVALESCENT HOSPITAL

The Board's decision can be found at www.nlrb.gov/case/32-CA-277939 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.